THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 7 SEPTEMBER - OCTOBER, 1956 Number 1

The Public Confidence In the Bar

. . . We cannot expect the Bar to function as it did in other days and under other conditions. Before it can function at all as the guardian of public interests committed to its care, there must be appraisal and comprehension of the new conditions and the changed relationships of the lawyer to his clients, to his professional brethren and to the public. That appraisal must pass beyond the petty details of form and manners which have been so largely the subject of our codes of ethics, to more fundamental consideration of the way in which our professional activities affect the welfare of society as a whole. Our Canons of Ethics for the most part are generalizations designed for an earlier ear. However, undesirable the practices condemned, they do not profoundly affect the social order outside our own group . . .

. . . The very conditions which have caused specialization, which have drawn so heavily upon the technical proficiency of the Bar, have likewise placed it in a position where the possibilities of its influence are almost beyond calculation. The intricacies of business organization are built upon a legal framework which the current growth of administrative law is still further elaborating. Without the constant advice and guidance of lawyers business would come to an abrupt halt. And whatever standards of conduct in the performance of its function the Bar consciously adopts must at once be reflected in the character of the world of business and finance. Given a measure of self-conscious and cohesive professional unity, the Bar may exert a power more beneficient and far reaching than it or any other non-governmental group has wielded in the past. . . .

JUSTICE HARLAN FISKE STONE

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IN THIS ISSUE

PRESIDENT APPOINTS SOCIETY COMMITTEE HEADS

ACTIVE TERM PLANNED

The hopes of our new President for a productive year are centered in the personalities of the chairmen of the Society's committees the list of which follows.

Mr. Schaeffer has expressed deep confidence in the integrity and competence of the men appointed to carry on the Society's chief activities in the profession and in its relationship to the community at large. "These men," said Mr. Schaeffer, "are to supply the leadership that is to perpetuate the ideals of The Decalogue Society of Lawyers." The President stressed the need for the enlistment of the interest of the entire membership in the work of these committees and its participation in the labors ahead.

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The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Illinois.

Priority of Highway Use Tax Over Liens

By LEONARD A. ASH

Mr. Ash, a member of The Chicago Bar, is a member of The Decalogue Society of Lawyers

Those of us who are associated with the commercial finance enterprises must, of necessity, be very zealous of the priority of the lien rights in the hands of the finance company which advances credit upon such security. Liens of this character, for practical purposes, in relation to personal property, usually take form in a conditional sales contract or chattel mortgage. The plain and obvious purpose of each is to serve as a device for credit.

Such a credit device may, however, not always afford the prior security for which it was intended. The effect of Federal or State taxes can, in some instances, seriously impair that secured lien.

A recorded lien for taxes in most cases establishes a paramount right in the State or Government against property, superior to that of a subsequent creditor or lien holder.

[1]However, in a recent case, the Supreme Court held that an unrecorded State lien for taxes was prior to the lien of a conditional vendor.[2]

That in effect was the decision of the court in International Harvester Credit Corporation, etal vs. Allen J. Goodrich, Edward H. Best and F. Roberts Blair, constituting the State Tax Commission of the State of New York. (The Supreme Court of the United States, No. 82, October Term, 1955, reported in April, 1956).

The cause arose on appeal from the Court of Appeals of the State of New York. The stipulated facts in brief, were:

Eastern Cartage and Leasing Co., Inc. was a New York Corporation operating several motor vehicles over the public highways of the State of New York. That corporation, for convenience called "carrier", operated from January 1, 1952 through February, 1954.

In February and March 1953, International Harvester Company sold two tractors (commonly known as trucks) to the "carrier" for $8,253 each. For each sales the "carrier" executed and delivered to International Harvester, the vendor, a conditional sales agreement in the sum of $6,541. The conditionals sales agreements were assigned by the vendor to the International Harvester Credit Corporation and were properly filed in the proper filing office.[3]

[1]Such a lien being of public record is "notice to the world".

[2]In fact, the vendor had no knowledge of the tax delinquency, nor was such asserted by the State until long after the sale.

The carrier became delinquent to the extent of $4,578.89 on each truck as of January 26, 1954, at which time they were repossessed by the finance company.

The vendor, International Harvester Company, bought the trucks at a public sale and resold them. One truck was resold to a purchaser in New York, the other to a purchaser in Massachusetts.

On April 21, 1954, *which was after the repossession* and *after the trucks had been resold*, the State of New York asserted its lien on each truck. The state claimed a total of $3,698.04 which represented the full amount of the highway use tax delinquencies owed by the carrier, Eastern Cartage and Leasing Co., Inc. The truck in New York was released on bond and as to the truck in Massachusetts, the State of New York asserted its lien against the proceeds of the resale.

The issue of fact was divided into three points: Number one: as to whether these taxes due against the carrier, prior to the date of sale under the conditional sales, may attach to the trucks. Point two: as to whether the State may assert its lien and to what extent against the trucks in question for taxes due during the period said trucks were in use on the highways in the State of New York. Third: as to whether the lien may be upheld as to any taxes due from the carrier after repossession of the trucks.

There was no dispute as to the amount due nor that the carrier was liable for the tax; nor was there any claim that the conditional vendor was subjected to any personal liability.

As to the second point, there was no controversy as to the State's lien against the trucks for that portion of the tax due for the operation of the respective truck on the State's highways. Third: the Appellate Division State Court denied the lien as to any taxes due after repossession of the trucks and this point was no part of the appeal to the Supreme Court. 284 App. Div. 604, 132 N.Y. S 2d 511.

The issue, therefore, became narrowed to point number one. Can the State of New York subordinate the rights of the conditional vendor to the State's lien for taxes against these trucks even though a major portion of the taxes arose upon the use of other trucks owned and operated by the carrier?

The court, of course, sustained the State's pri-

[3]The filing, required in New York, is of no significance in this cause.

ority. This decision on the surface is harsh, especially when we bear in mind that the trucks in question were sold on a lien priority contract of Conditional Sales, that the vendor had no knowledge of any tax deficiencies and had no opportunity of ascertaining such deficiencies[4] and that the Statute required no filing or recording of notice of a lien for such tax deficiency.

Let us however, consider the statute creating the State's lien. Article 21-Highway Use Tax (McKinneys Consolidated Laws of New York, annotated) Sec. 503 provides "In addition to any other tax or fee imposed by law, there is hereby levied and imposed a highway use tax for the privilege of operating any vehicular unit upon the public highways of this state.

Such tax shall be upon the carrier . . . . Such tax shall be based upon the gross weight . . .. and the number of miles . . .. operated on the public highways in this state . . . . Sec. 505 requires "Every carrier subject to this article . . . . shall file . . . . a return for the preceding calendar month . . . . Section 506 provides for the payment of tax and sets forth the State's lien as follows: "The fees, taxes, penalties and interest accruing under this article *shall constitute a lien upon all motor vehicles and vehicular units of such carrier.* The lien shall attach *at the time of operation* of any motor vehicle or vehicular unit of such carrier within this state and shall remain effective until the fees, taxes, penalties and interest are paid, or the motor vehicle or vehicular unit is sold for the payment thereof. ...*Such liens shall be paramount to all prior liens or encumbrances of any character and to the rights of any holder of the legal title in or to any such motor vehicle or vehicular unit.* (Italics Mine)

The conditional vendors contended that to the extent that the carriers delinquent taxes exceeds the sum due for the actual operation of the trucks in question on the State's highways, the statutory lien deprives them of property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

Holding in the negative, the court held that the principle of the State's priority attaches from the time of the carriers first operation of the respective trucks within the State. In its opinion (on page 7) the court declared "This holds good even though no assessment of the tax was made by the State until after the respective truck has been repossessed. The State's claim of priority . . . depends . . . upon its constitutional right to enforce the collection of all taxes . . . under a statute giving ample notice of the tax and of the provisions for its collection. The lien for such taxes may be enforced against any or all of such trucks, regardless of whether the taxes accrued from the carriers operation of one or the other of such trucks, or even whether they accrued from the carrier's use of the highways before its acquisition . . . of the . . . trucks subjected to the lien "quoting United States vs. Alabama, 313 U.S. 274,280-282."

FURTHER, THE COURT SAID Such liens are simple illustrations of the State's exercise of its prerogative right to impose a statutory lien for delinquent taxes upon the taxpayer's property. See Marshall v. New York 254 U.S. 380, 382-384. A State is entitled to wide discretion in such matters.

"The enforcement of this lien rests upon principles known to the law in other connections. A landlord's lien for unpaid rent long has been enforceable against personal property found on the premises in the possession of the tenant, even though the legal title to such personal property may be in a third party who has allowed the tenant to have possession and beneficial use of it. Spencer v. M'Gowen, 13 Wend. (N.Y.) 256.

The vendors also made strong contention that such a paramount lien might raise obstacles to widespread commercial and finance dealings in motor trucks. THE COURT STATED This statutory lien does not destroy the Efficacy of conditional sales financing. Practically it suggests that the conditional vendors secure assurance from their carrier-customers that the latter's highway use taxes are not in arrears. Justice Cardozo said for this Court in Burret v. Wells, 289 U.S. 670, 677-678: "Taxation is not so much concerned with the refinements of title as it is with the actual command over the property taxed—the actual benefit for which the tax is paid.

What of our Illinois jurisdiction? Chapter 95½ entitled "Motor Vehicles"—Illinois Revised Statutes —1955, State Bar Association Edition, provides in general for the registration of motor vehicles, license fees and the imposition of taxes thereupon. There are certain provisions for a Mileage Weight Tax for vehicles of various weights where owners elect to pay such mileage weight tax (Sec. 9b). In this respect, the statute is similar to that of New York. However, the Illinois Statute makes no provision for a lien such as is prevalent in New York. On the contrary, although Illinois does create a lien for certain violations of the statute, it specifically provides as Paragraph 12a-Sec. 11a of same chapter that, "also . . . such lien shall *not* be superior to any chattel mortgage or other lien attaching to such vehicle."

The obvious conclusion appears to be that in Illinois, under the present statute, a lien in favor of the state for license or taxes imposed upon a motor vehicle cannot impair the priority of a lien under a conditional sales contract or chattel mortgage.

[4] . . . At the time herein mentioned, Section 514 of the Tax Law of New York forbade the disclosure by the State of information concerning such tax delinquencies and made it a misdemeanor to divulge information as to the tax returns. Those restrictions have now been relaxed. Tax Law, 1955 Cum. Pocket Pt. 24.

Morton Schaeffer Installed

The installation ceremonies held on June 29th, at a luncheon in the Covenant Club, inducting into office Morton Schaeffer, the new president of The Decalogue Society of Lawyers, were marked by a large aettendance of members, their families, and guests. Representatives of the Bench and Bar present, together with the speakers on the rostrum emphasized the fitness for their respective posts of Morton Schaeffer, and the newly elected officers and members of our Board of Managers. More than thirty-five judges of the various courts in the city, county, and state attended this function. Past president of our Society, Archie H. Cohen was the installing officer. Harold C. Havighurst, dean, Northwestern University Law School delivered the principal address. Past president Elmer Gertz made the presentation of a gift from the Society to the retiring president, Bernard H. Sokol.

Other officers installed were, Solomon Jesmer, first vice-president, Alec E. Weinrob, second vice-president, Harry H. Malkin, treasurer, Judge David Lefkovits, financial secretary, and Michael Levin, recording secretary.

President Schaeffer noted as follows, in response to the many congratulatory comments on his installation in office as President of the Society:

"To the lawyer who desires to serve the profession and to serve his community, there is no better way than to become an integrated part of the many Bar Associations. I speak not only of The Decalogue Society of Lawyers, but also of the Chicago Bar Association, the Illinois State Bar Association and the American Bar Association. All of these great organizations do much to raise the standard of the profession.

Not only are they the means of making the lawyer constantly vigilant of his duty to safeguard all groups in society, whether they be majority or minority, but they bring to public notice a better understanding of the legal profession. They make the lawyer realize that a license to practice law is not only a means of livelihood, but also a sacred duty entrusted to him, to the end that the scales of justice are not counterbalanced by a heavy thumb.

The Decalogue Society from its inception has sought to carry on a program of legal education, to bring to its forums provocative themes, and to lift its voice, from time to time, either in acceptance or rejection of various legislative measures. Perhaps only a small voice, but when united with other members of the profession, it has made itself felt.

One of our Society's important activities is that of legal education, and this year we will seek to take advantage of our facilities in order to expand this program."

Morton Schaeffer is a member of the Chicago Bar Association, the Illinois State Bar Association, the American Bar Association, Patent Law Association of Chicago, the American Patent Law Association, and the Copyright Society of the United States, Bar Association of the Seventh Federal Circuit.

He is chairman of the Copyright Committee of the Patent Law Association of Chicago, chairman of the Sub-Committee on Copyrights of the Patent Law Committee of the Chicago Bar Association, member of the Committee on International Copyrights of the American Bar Association, and member of the American Patent Law Association.

Biographical Sketch

MORTON SCHAEFFER was born on February 22, 1901, in Wausau, Wisconsin. He started taking piano lessons at the age of 7½ years, gave his first recital at the age of 12, and began playing professionally at 15.

He was graduated from Wausau High School in 1918. He won state honors in public speaking at Lawrence College, Appleton, Wisconsin, and was awarded a two year scholarship at Lawrence College.

In 1920, finding the pursuit of music both lucrative and broadening, he became a part of show business, referred to nostalgically as vaudeville.

On the death of his father in 1923, he remained in Chicago and worked for music publishers as a pianists and song plugger. In 1925, he decided to return to the completion of his education and enrolled at the John Marshall Law School, working for the music publishers during the day, and playing with dance orchestras on the nights he was not attending school.

At John Marshall Law School he met Miss Libby Glesser. They were married in 1927, after the completion of two years at the school. Both were graduated as members of the honor society, The Order of John Marshall, in 1928.

Schaeffer was admitted to the bar in 1928, and immediately started in the practice of law. His wife was admitted in 1929, when the firm of Schaeffer & Schaeffer began, and still continues. In 1938 each received the degree of J.D. from John Marshall Law School.

Mr. and Mrs. Schaeffer are the parents of two daughters, Heloise, 26, and Barbara, 17.

THE FREEDOM AGENDA

Our Board of Managers voted on July 20, 1956 to affiliate The Decalogue Society of Lawyers with the Freedom Agenda of Chicago as a cooperating member.

The Freedom Agenda is a project directed by the Freedom Agenda Committee of the Carrie Chapman Catt Memorial Fund, Inc., and supported by a grant from the Fund for the Republic. It is "an educational program to increase understanding and appreciation of the role that individual freedom plays in our system of constitutional democracy and representative government."

Suggested Agenda subjects for group discussion include pamphlets specially prepared by Zechariah Chafee, Jr., author and professor of constitutional law, Harvard Law School ("Freedom of Speech and Press"). T. V. Smith, former Congressman-at-large, State of Illinois, and professor of philosophy, Syracuse University ("The Bill of Rights and our Individual Liberties"), Robert Kenneth Carr, professor of government, Dartmouth College ("The Constitution and Congressional Investigating Committees"), and other scholars.

Other cooperating organizations in the Chicago area include the Chicago Bar Association, American Jewish Congress, Church Federation of Greater Chicago, National Conference of Christians and Jews, YMCA, and the American Jewish Committee.

Early announcement of the Society's Freedom Agenda program will be made by our Civic Affairs committee and interested members will be invited to participate. For further information, please address Mr. Richard L. Ritman, chairman of the Decalogue Civic Affairs committee, 139 North Clark Street, Chicago 2, Illinois.

JUSTICE U. S. SCHWARTZ HONORED

Member Ulysses S. Schwartz, Justice Appellate Court of the State of Illinois, Second Division, delivered on the 23rd of June, the commencement address at the Seventy-Ninth Commencement exercises of The John Marshall Law School. An honorary degree of Doctor of Laws was conferred upon Justice Schwartz.

CONGRATULATIONS

At a recent meeting of the Board of Directors of the Exchange National Bank, 130 South LaSalle Street, member Jerome Sax was promoted to the office of Executive Vice-President.

Mr. Sax has been with the Exchange National Bank since 1946, and prior to his election to the new post was a member of its Board of Directors.

IRWIN N. COHEN
Commissioner of Investigation

Friends are congratulating member Irwin N. Cohen upon his recent appointment, by Mayor Richard J. Daley, as Commissioner of Investigation of the city of Chicago.

The Department of Investigation was recently created by the City Council as a new executive department of the city. The theory underlying the creation of this new department was that the chief executive of the city needed a staff fact-finding agency which could operate independently of the other executive agencies and be responsible only to the Mayor. The Commissioner is appointed by the Mayor by and with the advice and consent of the City Council.

The Commissioner is authorized by the ordinance, "to make any investigation directed by the Mayor" and "any study or investigation which, in his opinion (the Commissioner's) may be in the best interest of the city, including but not limited to investigation of the affairs, accounts, integrity and efficiency of the personnel of any city agency."

Mr. Cohen has served as Chief Council for the City Council's Emergency Committee on Crime, First Assistant United States Attorney, and for a brief period, United States Attorney by appointment of the United States District Judges in the Northern District of Illinois.

Does the pear tree say to the apple tree,
I hate you 'cause you're not like me?
Does the green grass ask the sky so blue,
I'm green, why aren't you green too?
A rose smells sweet 'cause it's a flower,
An onion tastes strong, a pickle is sour.
They're different, yet they get along,
And no one seems to think it's wrong.

From: *The Itch of Opinion*
by Leo A. Lerner.
For Sale in All Book Stores, $3.75.

DECALOGUE LUNCHEON MEETINGS

On Friday of each week the Board of Managers of The Decalogue Society of Lawyers meets in a private dining room for luncheon, at noon, at the Covenant Club, 10 North Dearborn Street. Members are invited to attend, listen to committee reports, and learn of the activities of our Bar Association. No reservations necessary.

SOCIETY MEMBERS CANDIDATES FOR PUBLIC OFFICE

The following members of our Society nominated for public offices in the last primary will be voted on in Chicago and Cook County in the general election on November 6, 1956.

DEMOCRATIC	*REPUBLICAN*
HENRY X. DIETCH State Representative 1st District	PHILIP R. DAVIS Judge, Municipal Court of Chicago
BARNET HODES Delegate, 2nd District National Nominating Convention	THEODORE P. FIELDS Judge, Municipal Court of Chicago
NATHAN J. KAPLAN State Representative 13th District	VICTOR H. GOULDING Judge, Municipal Court of Chicago
JUDGE DAVID LEFKOVITS Judge, Municipal Court of Chicago	REGINALD J. HOLZER State Representative 12th District
ABNER J. MIKVA State Representative 23rd District	ERWIN L. MARTAY State Representative 8th District
BERNARD S. NEISTEIN State Representative 16th District	SIDNEY RUBEN Judge, Municipal Court of Chicago
JAY A. SCHILLER, JR. State Senator 4th District	SIDNEY S. SCHILLER State Representative 13th District
PHILIP A. SHAPIRO Alternate Delegate 11th District National Nominating Convention	MICHAEL F. ZLATNIK State Representative 8th District
SIDNEY R. YATES Congressman 9th District	

THE DECALOGUE BOWLING LEAGUE

The Decalogue Bowling Committee, Louis J. Nurenberg chairman, announces that the bowling league will commence play on September 12, 1956 at the Gold Coast Bowling Lanes at 1213 North Clark Street, at 4:30 P. M. and will continue weekly thereafter on Wednesdays at the above hour.

There is still room for more participants. An initial fee of five dollars is required for joining. A check for this amount should be sent to the offices of our Society, 180 West Washington Street, payable to the Decalogue Bowling League.

Since this is the first year of the Bowling League, special founders' trophies will be given to each charter member of the league. In addition, there will be presented money prizes, the usual winners' prizes, bowling shirts, and many door prizes which will be formally presented at a victory dinner following the season's activities.

Applications for Membership

FAVIL DAVID BERNS, *Chairman Membership Committee*

APPLICANTS	*SPONSORS*
F. Raymond Marks, Jr.	Bernard Weissbourd George S. Feiwell
Philip R. Davis	Benjamin Weintroub Morton Schaeffer
Aaron M. Jacobs	Ira Jacobs Harold Aling
Alvin Baron	Alec E. Weinrob Simon S. Porter
Jordon Kaplan	Bernard E. Epton Saul A. Epton
Leonard L. Ruffer	Favil David Berns Benjamin Weintroub
Howard M. Ruskin	Favil David Berns Benjamin Weintroub
William Jakofsky	Leonard L. Leon Benjamin Weintroub
Charles Mishkin	Oscar Nudelman Bernard A. Fried
Ben Schwartz	Paul G. Annes Benjamin Weintroub

YATES FIGHTS FOR THE AGED

Member Congressman Sidney R. Yates of the Ninth Congressional district filed a bill to establish a Bureau of Older Persons in the Department of Health, Education, and Welfare, to deal with problems of people age 65 and over. The bill also sets up a program of grants-in-aid to the States to encourage them to undertake prompt measures to train needed personnel and to lay out a course of action in handling the problems of our older citizens. The bill recognizes that primary responsibility rests with the States and local communities and that the Federal Government can only help them to help themselves. The goals sought to be attained by the bill are those recommended by the Council of State Governments.

Member Yates is candidate for re-election on the Democratic ticket.

JOBS FOR YOUNG LAWYERS

More than ever before, reports Michael Levin chairman of the Decalogue Placement Committee, is there need for jobs in law offices for the newly admitted young lawyers to the Illinois Bar. Mr. Levin urges members of our Society who have clerkships or other positions available in their offices or know of such elsewhere to write or phone him at 134 N. LaSalle Street. Telephone ANdover 3-3186.

Judge Learned Hand on Independent Judiciary

By JUDGE ULYSSES S. SCHWARTZ

Member Ulysses S. Schwartz is Justice of Appellate Court of the State of Illinois, Second Division

In 1942 on the occasion of the 250th anniversary of the founding of the Supreme Judicial Court of Massachusetts, the oldest court in the United States, Judge Learned Hand delivered an address entitled "The Contribution of an Independent Judiciary to Civilization".[1] The paper is only eight or nine pages long but it is packed with such wealth of wisdom, understanding and imagination, that acquaintance with it I believe, is a "must" for judges and lawyers. Casual reading, however, will not do. To one who will bide awhile and read it not once, but twice and perhaps thrice, the reward will be a magnificent view of the art and scope of the intellect of one of the greatest judges of our time.

When I first read it I was perplexed and puzzled. Then it occurred to me that fourteen years had elapsed since its delivery and that I should reconstruct in my mind the period in which the paper was read. It was 1942 and memories of New Deal decisions and of "court packing" were fresh in the minds of Bench and Bar. There were judges who staunchly resisted compliance with the new constitutional decisions of the Supreme Court and found excuses for not following them.

In this they were applauded by many prominent laymen, judges and lawyers. When, therefore, Judge Hand was asked to talk about an independent judiciary, it was perhaps an invitation to enter the lists on the side of those who saw a "supine" judiciary, upholding laws which by the rule of "stare decisus" were supposed to be unconstitutional. What his audience heard was something quite different, the implication of which, if it had been fully grasped, would surely have caused a furor. At the outset Hand poses the proposition that there could well be forms of political organization in which the judiciary would not and should not be independent, and he constructed an example for us. But, says Judge Hand, that is not our way, and he proceeds to a discussion of the role of the courts under our system. For this purpose he considers separately the three divisions of the law—enacted or statutory, common or customary, and constitutional.

[1]*THE SPIRIT OF LIBERTY: Papers and Addresses of Learned Hand.* Collected, and with an Introduction and Notes, by Irving Dilliard. Alfred A. Knopf. 285pp. $3.50.

With respect to enacted law he assumes that this is law in which contending social and economic forces have presented their views in legislative committees, in public hearings, and in whatever lawful way influence may be exercised in support of a point of view. The statute or ordinance thus becomes an accord, a composition of the differences of the contending parties. An independent judiciary will strive to understand what the real accord was, not necessarily with literal adherence to the verbiage, but with regard for its spirit as well. In this effort of interpretation the Judiciary must be completely independent. No regard may be taken of what is thought to be a "popular will." Nor can there be any yielding to "surreptitious, irresponsible and anonymous intervention." The "vague stirrings of mass feelings which many who pride themselves upon their democracy mistake for the popular will" cannot be permitted to intervene. To do so would be to destroy the accord and endanger the system.

Law based upon custom pertains in the main to the ordinary economic and social disputes of men. Here, they accept the verdict of the past until the need for change forces a choice "between the comforts of further inertia and the irksomeness of action." The making of law by custom in the courts is not, as Judge Hand views it, a democratic process. It is not made by an effort to determine the wishes of the people nor by representatives of their choosing. Yet it is acceptable in a republic or democracy so long as courts impose upon themselves a "self-denying ordinance which forbids change in what has not already become unacceptable." This he thinks in the nature of things lawyers and judges will do.

Finally, he proceeds to a discussion of constitutional law. He first considers those provisions of the constitution which distribute political power between the legislative and executive branches. As to these, there is a necessity for some tribunal with authority to settle jurisdictional disputes and such a tribunal must, of course, be firmly independent. He then proceeds to the real controversy.

The unique quality of American constitutions is in their incorporation of certain essential principles to insure the just exercise of political powers. Should these be treated as other parts of the constitution and as enacted law? How far should courts go in the exercise of their power to invalidate? Here, he says, the past is only a feeble light, for "these rubrics were meant to answer future problems un-

imagined and unimaginable." They are not subject to interpretation. They require an appraisal of human values. "How far should the capable, the shrewd or the strong be allowed to exploit their powers? When does utterance go beyond persuasion and become only incitement? How far are children wards of the state so as to justify its intervention in their nurture? What limits should be imposed upon the right to inherit? Where does religious freedom end and moral obliquity begin?" Here he would by free choice of the courts themselves restrict their so-called independence of action. These are not questions of law. Applied to such questions, those general principles of our constitution become stately admonitions that can best serve as counsels of moderation "with only that content which each generation must pour into them anew in the light of its own experience. If an independent judiciary seeks to fill them from its own bosom, in the end it will cease to be independent. Aid its independence will be well lost, for that bosom is not ample enough for the hopes and fears of all sorts and conditions of men, nor will its answers be theirs; it must be content to stand aside from these fateful battles." He sums up with the conclusion that judges should be independent, but in our system the price of that independence will be their aloofness from vital political controversies that center about the basic conflicts of "right and wrong—between whose endless jar justice resides."

Hand then considers how can be preserved those fundamental principles of fair play and equity which our constitutions enshrine and whether unsupported by the courts they will serve as counsels of moderation. His conclusion is that these depend not upon the courts; that they must have the vigor within themselves to survive; that they represent a moderation, a temper which can understand and respect the other side, which feels a unity between all citizens, which has "faith in the sacredness of the individual." They follow some of the most eloquent passages in all legal literature, which I leave for your reading.

If any of you acquiesce in my urgent appeal to read this magnificent address I know that you will find it, as I did, completely free of cant and meretricious art, bold in its search for truth, wise, understanding and yet precise in charting the course.

PROBATE PRACTICE

Judge Robert Jerome Dunne of the Probate Court discussed on June 15th, at a luncheon in the Covenant Club, new legislation affecting probate court practice. The meeting was arranged by The Decalogue Legal Education Committee.

HOW TO BECOME A GOOD LAWYER

In May 1954 a twelve-year old boy living in Alexandria, Virginia, sent a letter to Mr. Justice Frankfurter in which he wrote that he was "interested in going into law as a career" and requested advice as to "some ways to start preparing myself while still in junior high school." He received this reply:

My dear Paul:

No one can be a truly competent lawyer unless he is a cultivated man. If I were you I would forget all about any technical preparation for the law. The best way to prepare for the law is to come to the study of the law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give. No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry, seeing great paintings, in the original or in easily available reproductions, and listening to great music. Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.

With good wishes,
Sincerely yours,
Felix Frankfurter

OF LAW AND MEN by Felix Frankfurter. Harcourt, Brace and Co.

JUDGE JACOB M. BRAUDE

Charter member Jacob M. Braude, Judge of the Municipal Court of Chicago, former financial secretary of our Society, was chosen by the Cook County Democratic Central Committee as a candidate for a vacancy on the Circuit Court Bench. Judge Braude, if elected, will fill the vacancy left by the election of Judge Jerome Dunne to the Probate Court.

Judge Braude is widely known in this city and state for his long interest in Jewish and communal problems. His contributions in combating juvenile delinquency are weighty and national in scope and character. He is a past president of the Young Men's Jewish Charities and the Zionist Organization of Chicago.

He is the author of *I Like Bad Boys,* and *Speaker's Encyclopedia of Stories, Quotations and Anecdotes.*

GROUP LIBEL

EDITORS NOTE. The following articles are a condensation of three prize winning essays chosen in a contest conducted by The Decalogue Society of Lawyers among more than one-hundred law schools in the United States. The Editor is indebted to member Leonard L. Leon for the abridgement of the original contributions.

Introductory Comment

Almost a decade has elapsed since these essays were written. Without doubt, the subject has the same timeliness and importance today.

Were the essayists to bring their papers up to date, their task would not be too difficult. They would of course note the precedent — shattering desegregation cases and the consequent destruction of the insidious "separate but equal" facilities doctrine. What effect these decisions will have on the pattern of minority relations is at this time a matter of pure speculation.

In the "Group Libel" area, *Beauharnais vs. Illinois* (343 U.S. 250, 1952) is the leading case. Interestingly enough it originated in this jurisdiction. *Beauharnais* involved the validity of an Illinois criminal group libel law, the United States Supreme Court sustaining the statute. Many of the proposals put forth by the essayists would seem to be constitutional under *Beauharnais*.

But, as Justice Frankfurter never tires of reminding us, a law that is constitutional is not necessarily wise. All the essayists agree that group libel legislation is essential. This writer, with the advantage of hindsight, must respectfully dissent. No other period in American history has witnessed the inroads to our First Amendment freedoms that have occurred since these articles were written. The imperative need is for less restrictive legislation, not more.

Regardless of the excellent motives of its proponents, such legislation invariably boomerangs. Mr. Justice lack, dissenting in *Beauharnais*, uttered an eloquent *caveat:*

> If there be minority groups who hail this holding as their victory, they might consider the possible relevancy of this ancient remark: 'Another such victory and I am undone.'

LEONARD L. LEON

The Problem

"With due regard for the constitutional guarantees of freedom of expression, what can be done to protect the community from tension and violence arising from defamation or abuse of its minority groups, such as Negroes, Catholics and Jews?"

First Prize: Russel Knapp

Columbia University Law School

It is the purpose of this article to suggest certain types of legislation that may be of help in combating defamatory and abusive attacks on minority groups. To appreciate the legal problems involved in formulating such legislation, it will be necessary to summarize briefly the constitutional concept of free speech as well as to determine the effectiveness of the presently available civil and criminal remedies.

Basically the doctrine of free speech is postulated upon the competitive value of a free trade in ideas and the realization that it is time and not men who determine the ultimate truth in society. The antidote to false doctrine is not the suppression of speech but more speech. So important is the guarantee of free speech in our society that Mr. Justice Cardozo once termed it "the matrix, the indispensable condition of nearly every other form of freedom."

But it is not all speech that can come within the constitutional immunity afforded by the 1st and 14th mendments. The lewd, the obscene, the profane, the libelous, the "fighting" word, have never been considered part of any exposition of ideas. Nevertheless, it has always been a question of considerable delicacy just what social groupings should be given the right to sue for defamatory attacks. No one will deny that such attacks on symbolic individuals or groups have been and continue to be a "highly favored technique wielded by agencies inimical to the democratic way of life."

In the United States however, a vigorous public policy for the handling of group libels has been impeded by a unique attitude toward reputation and a tradition of individualism. Under present law, no civil liability stands in the way of most defamatory attacks upon an individual's status provided the attacker has resorted to the simple device of using a "class" as the immediate object of his statement or article.

Originally the law of libel and slander was designed to protect the property interest an individual had in his reputation. But where a person inveighed against mankind, it was inconceivable that an individual could prove any damage to his reputation or position in life and hence such individual was afforded no remedy by the common law. The refusal of the courts to include group defamation in civil libel and slander suits throughout the years has been based in part on their concern with (1) the procedural difficulties which might arise, (2) the pos-

sible impingement on the right of free speech, and (3) the unnecessary extension of a civil remedy where adequate criminal sanctions supposedly existed.

Firstly, the procedural bugaboo that the courts envisaged concerned the multiplicity of suits to which the defamer might be subjected. However the use of a defendant's bill of peace would resolve this difficulty without the present derogation of substantive rights. Secondly, the doctrine of free speech has never been held to abrogate the common law with respect to libel and slander. Thirdly, the use of the criminal law as an efficient deterrent to defamatory attack has proved to be ineffective. Nevertheless, even if criminal sanctions were effective, criminal law is not always applicable. Usually the greatest abuse comes from that class of defamatory propaganda that neither incites to a breach of the peace nor gives rise to any "clear and present danger but . . . is full of lies and borders continually on the libelous." It is against this type of propaganda that some effective civil remedy is needed.

To enable minority groups to meet the threat of organized defamation, it has been suggested that the civil action of libel and slander be extended by legislative action to include group defamation. Either an individual or a representative organization of that group should be permitted to bring the action. However, such a statute should be narrowly drawn to apply to members of minority groups who because of race, religion or national origin are subjected to hatred, contempt, ridicule, or obloguy; or where the defamatory remarks caused such persons to be shunned, avoided or injured in their business or occupation. It would also be necessary to broaden the basis for defending group libel actions in order to safeguard the right of free speech. In addition to the usual defenses of truth and privileged communications, there would be the defense for publications consisting of fair comment upon the conduct of the group in respect to public affairs, honestly made in the belief of their veracity and upon reasonable grounds that they were true.

Furthermore, to deter the use of the group libel suit for personal gain, recovery of money damages would be severely limited if not altogether eliminated. In its stead could be retraction of the libel in a manner the trial judge deems appropriate, the enjoining of the future repetition of the libel, and discretionary power for the judge to require the defendant to post a bond for future good behavior.

Where the defamatory and abusive attacks are made in public places and likely to result in breaches of the peace, the State would have a legitimate interest in protecting its minorities. Rather than have racial hatred or ineffective criminal libel statutes of dubious constitutionality, a narrowly drawn breach of peace statute would suffice.

By no means, though, are these group libel and breach of peace statutes dispositive of this problem. It is only with the realization of how and why irrational discriminations against minorities hurt the whole community that any success will ever be achieved in this field. For "we know now more surely than ever before that callousness to the rights of individuals and minorities leads to barbarism and the destruction of the essential values of civilized life."

* * * *

Second Prize: Robert L. Weinberg

School of Law, Maryland University

The legal—even moral—dilemma which this problem presents presupposes a continuation of the existing constitutional provisions regarding unfettered expression free from civil and criminal liability. For better or for worse we are subject to a constitution which guarantees the right of any person to say or write in the nature of opinion more or less what he will without being denied that right by congressional or state legislative action. The theoretical value of such freedom of expression is that "the rights of the best men are secure only as the rights of the vilest and most abhorrent are protected." a proposition reaffirmed by Pound, Holmes and Brandeis in their judicial opinions.

Like many another moral or cultural idea, freedom is a relative concept. A freedom which we take for granted today was a much sought for goal yesterday. As an illustration, consider our right of universal suffrage. Not so long ago, the right of suffrage was denied to many of the groups that exercise it now. We struggle for what we believe is right at the time, and the radical idea of today is the precursor of the accepted doctrine of another era.

When the freedoms of the present are under observation, there arises the new consideration of testing and balancing those freedoms, one against the other. Reaching the proper balance is really the problem which is atacked here.

The interpretations of the First Amendment are the sign posts which the Supreme Court has erected along the road which we must travel. Since this amendment is the one expressly granting the rights which we are seeking to "curtail", and the one which, when supplemented by the Fourteenth Amend. ment, applies to the States as well as to the national government, a summary of its effect will not be out of order. The combined holdings of the Court have been stated by Osmond K. Fraenkel in his book

"Our Civil Liberties", and we can accept his conclusions in lieu of a detailed review here. Fraenkel contends that essentially the Court has said concerning the First Amendment, that Congress may not interfere with religious beliefs; but it may prohibit religious practices deemed harmful to society. Congress may punish utterances if there is a "clear and present danger" that they will result in action harmful to the country. But with respect to freedom of the press, neither Congress nor the states may censor publications in advance except for obscenity, and Congress may deny mailing privileges to printed matter deemed harmful.

What then, may we deduce from these principles with regard to the privilege of free speech and press in libeling a group or class of the population? It is the writer's contention that since we have as yet no square ruling from the Supreme Court on how a minority may effectively and legally fight the abuse it receives at the hands of energetic bigots, any one of a number of steps could be taken.

Four methods are usually discussed by judges and others for curbing the practice of inciting hatred and abuse:

1. The exercise of police power.
2. The use of counter-argument and propaganda.
3. Legislation by the states.
4. The contract theory.

The exercise of the police power has been resorted to in many varying circumstances. Generally such measures have been in the form of a preventive action by a mayor or governor in the matter of a public meeting or breach of the peace. The danger of such a method lies in the abuse of the power of discretion employed by such executive and its execution by his subordinates.

The use of counter-propaganda is not a legal weapon within the contemplation of this paper. But since it is the most widely advocated method of protecting minorities, it cannot be overlooked. Thus Chafee in his *Free Speech in the United States* stated:

> Intolerance can always find some crevice in the administration of the law through which to creep to accomplish its purpose. The only remedy is to build up every day and every hour the opposite spirit, a firm faith that all varieties and shades of opinion must be given a chance to be heard, that the decision between truth and error cannot be made by human beings, but only by time and the test of open argument and counter-argument, so that each citizen may judge for himself.

If there is any effective refutation of this argument, it is that an individual or a minority cannot wait for the passage of time to find out if the experiment of democracy is to give him the protection he needs now.

The third method is that of legislation by the states. Statutes have been passed, and sometimes found to be constitutional, under the "clear and present danger" doctrine; but in the main they have been too vague and uncertain of application and interpretation to have achieved any permanent results.

The fourth theory has been alluded to but never seriously applied or attempted. This idea is based on the concept that a contract exists between the government and the individual, for the enforcement of which the individual may bring an action so that the government will be forced to protect him.

The above listed solutions have not solved the dilemma. How can it be solved? The needs of today require a revision in thinking. The proposition that all shades of opinion must be given the unrestrained right to spread their gospel of hate, must give way to a balancing of the interests of the freedoms concerned. We must establish new legislation to terminate group defamation and incitement to hatred, violence and abuse. The need for tranquility within the community is paramount to the need for permitting freedom of speech inciting to genocide.

* * * *

Third Prize: Mrs. Ann Fagan Ginger

University of Michigan Law School

The answer to this problem can best be approached by describing the present status of minority groups in the United States, and by outlining some general principles to be followed in dealing with it. Detailed proposals for using legal methods to combat defamation and prohibit all forms of abuse must then be considered, as to their constitutionality and practicality.

Race hatred is an expensive matter in terms of lives lost, property damaged, spread of disease, crime, juvenile delinquency, as well as in terms of degradation of the moral fiber of America. The relation between such defamation and abuse, and economic security is one of the basic principles to be considered. No program to implement the struggle of these minorities can fully succeed unless it is accompanied by security for ALL Americans. Security alone is not the answer, but it does provide the necessary background for solving the problem.

Another principle which must be recognized is that defamation and abuse of peoples interact. A group of people which can be publicly defamed without opposition can probably be abused; a group whose members can be lynched, surely can be lied about, caricatured. Since racial and religious antagonism are too deeply imbedded in our country

to give way under scattered attacks, they must be uprooted by simultaneous opposition on many fronts. This opposition must be democratically conceived and administered. The desired result can only be achieved by resolving the conflict between individual freedom and group protection.

Defamation of groups of people means the deliberate telling of falsehoods about them. The problem is to discover what methods can be used to stop the deliberate publication of statements about groups of people which can be proved to be lies.

Many states now have statutes prohibiting incitement to riot or other illegal conduct. Stringent enforcemeent of such statutes against speeches and publications of known race-haters could do much towards decreasing racial tension.

Another legal principle might well be introduced into this field; the right of privacy. A right of action should be granted for invasion of privacy by statements attacking the race or religion of the individual, since it must be remembered that each member of a minority group feels the lash, when all members of that group are attacked.

Also in the field of state legislation, most northern states have Civil Rights Laws that are seldom enforced. State departments of education must publicize the existence of these laws, and attorney generals must make it clear to county prosecutors that these statutes are to be enforced. In recent years several states have enacted fair employment practices statutes, prohibiting discrimination in employment on the basis of race, creed, color or national origin.

In the federal sphere stringent enforcement of the fifth, fourteenth and fifteenth Amendments and the Civil Rights Acts passed thereunder, is a necessity. Not only must existing state and federal statutes be enforced, but a number of statutes must be passed on both levels; legislation directed against lynching, the poll tax, racial and religious discrimination in employment and equal opportunities for housing and education.

The judiciary also has a role to play in the clean sweep needed in inter-cultural affairs. The long-used "separate but equal" doctrine, which has supported the worst type of discriminatory treatment, needs to be reconsidered in the light of factual data. This fiction could be swept away by a Brandeis-brief, and a more honest and fruitful approach to the problem of segregation could thereby be achieved.

Congress should set up a cabinet department on races and nationalities to investigate, publicize and educate the people on inter-cultural matters. It could also serve as a source of information on methods of dealing with particular aspects of the problem.

It may be objected that it would be dangerous to proceed as rapidly on as many fronts as has been suggested within. But, as realists, we must recognize that only a few of the proposals made will actually be achieved in the immediate future, not for legal reasons, but because of the lack of understanding and inertia of the people, and especially of the legislators, administrators and judges. And as Americans, conscious that our country was born in a revolution and that it only became united after a civil war, we must understand that compromise does not surmount any problem, mis-rule by a foreign power, slavery, or mistreatment of minority groups. As in battle it is not safe to have one undefended position, so in society defeat is certain if would-be violators can find one loop-hole in the legal protection of the rights of minorities. If we really want to outlaw abuse and defamation of Negroes, Catholics and Jews for the good of the community, I know no other way.

LEONARD G. GROSSMAN

A long and active life has ended with the passing, on June 12th, of Leonard G. Grossman, former member of our Board of Managers. Grossman came to Chicago in the second decade of this century and was soon prominently identified with Chicago's Jewish, civic, and political life. An eloquent speaker who won honors in oratorical contests wherever he competed, a colorful figure on the platform, Grossman commanded for many years a large following in the communal affiairs of our city. For the past decade, aside from his law practice, he devoted much of his time to B'nai B'rith activities. His public honors were many.

He received his L.L.B. in Atlanta, Georgia, in 1913 while working as a reporter for the *Atlanta Constitution*.

In 1914 he was elected delegate to the 1st American Jewish Congress from Atlanta; in 1917, delegate from Georgia to the second American Jewish Congress, and in 1923, delegate to the third American Jewish Congress from Chicago.

President of Chicago Zionist Organization, 1922, 1923. President Kadisha Lodge, Order B'rith Abraham, Atlanta, 1917, President, Atlanta Civic Forum 1916; General Counsel Georgia Woman's Suffrage Association, 1913 to 1921 inclusive; lone male delegate to First White House Conference ever held on Women's Suffrage, 1914; President Georgia Men's League for Women's Suffrage 1914 to 1920; President Ramah Lodge No. 33, B'nai B'rith Chicago, 1921, 1922, 1946-47; Chicago alderman, 1927-1928-1929.

He is survived by his widow, Trudel, sons Leonard A., Raymond, and daughter Flora Mae Aron.

CONFUCIUS' TEACHINGS ON GREAT BOOKS AGENDA

The fourth year of The Decalogue Society Great Books discussion group will commence on Monday, September 17th, at 6:15 P.M., when for the first time in the history of the course, the subject will be *The Analects* by Confucius.

Other masterpieces on the agenda of the Great Books, are:

October 1, 1956—Plato, *The Republic,* Books VI, VII

October 15, 1956—Aristophanes, Lysistrata; *The Clouds*

October 29, 1956—Aristotle, *Poetics*

November 12, 1956—Euclid, *Elements of Geometry*

November 26, 1956—Marcus Aurelius, *Meditations*

December 10, 1956—Sextus, Empiricus, *Outlines of Pynhonism*

January 7, 1957—*The Song of The Volsungs and Nivelungs*

January 21, 1957—St. Thomas Aquinas, *On Truth and Falsity*

The session will convene on alternate Mondays, at 6:15 P.M., at the Decalogue offices, 180 West Washington Street.

There is no fee for participation in the course. There are no educational or other pre-requisites. Attendance is not limited to lawyers, only. The discussions are on an adult, informal level. If more information is desired, please phone ANdover 3-6493.

Messrs. Oscar M. Nudelman and Alec E. Weinrob are co-leaders of The Decalogue Society Great Books course.

TRUMAN LIBRARY

Members Col. Jacob M. Arvey and Nathan Schwartz were among the most active civic leaders in this city who helped raise over $100,000 dollars toward the completion of the Truman Library in Independence, Missouri. The drive for funds culminated at a luncheon on July 10th in the Palmer House, at which Mr. Harry S. Truman was the principal speaker. Over one-thousand donors to the library fund attended the affair.

HEBREW UNIVERSITY LEGACY PROGRAM

Miss Rita Blume, National Deputy Executive of the American Friends of the Hebrew University, addressed our Board of Managers on August 2 at a luncheon in the Covenant Club, on a legacy program for the Hebrew University.

The local offices of the American Friends of the Hebrew University are at 77 West Washington St.

CHICAGO BAR ASSOCIATION PRESIDENT TO ADDRESS SOCIETY

The Decalogue Forum Committee, Louis L. Karton chairman, announces that Werner W. Schroeder, president of the Chicago Bar Association, and general counsel for The Chicago Transit Authority, will address our Society on September 28, at a luncheon in the Covenant Club, on "A Commission to Hear Personal Injury Cases."

Members and their friends are cordially invited to attend.

FROM ISRAEL

Israel's courts were closed for a day when 500 judges and lawyers left for border settlements to aid in the fortification of outlying Israel villages.

The 23rd group of Jerusalemites, including personnel of the Hebrew University, the Foreign Ministry and the Bank of Israel, joined the jurists in aiding distant settlements.

5,500 Jerusalemites have donated 24,000 days of work since the volunteer movement to aid in fortification work begun early this winter.

HARRY J. DIRECTOR, CHAIRMAN

Member Harry J. Director, President of the Council of Traditional Synagogues of Greater Chicago, will be general chairman of the annual dinner of the Hebrew Theological College, on October 14, at Hotel Morrison.

The affair is planned to raise funds for the college and, also, aid in the college building campaign for a new $5 million campus in Skokie, Ill.

FLORIDA NOTES

Member Michael M. Isenberg of Miami, charter member of our Society, was married recently to Mrs. Louise Ross, formerly of Clarksburg, West Virginia. Active in civic affairs in South Florida, Isenberg is Chancellor of the greater Miami chapter of Tau Epsilon Rho, international legal fraternity.

REINSTEIN ON INCOME TAX

Member Max A. Reinstein addressed the Tau Epsilon Rho Legal Fraternity on July 29, at the Spaulding Hotel, Michigan City, on "The Burden of Proof in an Income Tax Matter."

AMERICAN CITIZENSHIP DEFENDED

On August 11, The Board of Managers of our Society approved a resolution of solidarity with Senate resolution 323 unanimously adopted by the United States Senate on July 25, 1956. Its gist is an expression of condemnation by our highest legislative body of the indignities inflicted by the Saudi Arabian government on American citizens of Jewish faith. The President of our Society was instructed to send letters of commendation to senators Everett Dirksen, Paul Douglas and Herbert H. Lehman for their part in the adoption of this resolution.

TEXT OF RESOLUTION S. RES. 323 UNANIMOUSLY ADOPTED BY THE UNITED STATES SENATE ON JULY 25, 1956.

Whereas the protection of the integrity of United States citizenship and of the proper rights of United States citizens in their pursuit of lawful trade, travel, and other activities abroad is a principle of United States sovereignty; and

Whereas it is a primary principle of our Nation that there shall be no distinction among United States citizens based on their individual religious affiliations and since any attempt by foreign nations to create such distinctions among our citizens in the granting of personal or commercial access or any other rights otherwise available to United States citizens generally is inconsistent with our principles: Now, therefore, be it

Resolved, That it is the sense of the Senate that it regards any such distinctions directed against United States citizens as incompatible with the relations that should exist among friendly nations, and that in all negotiations between the United States and any foreign state every reasonable effort should be made to maintain this principle.

The following excerpt is from Senator Herbert H. Lehman's address in the Senate setting forth the reasons for the resolution:

> . . . How does the government of Saudi Arabia treat American citizens? Let me enumerate some of the affronts which we suffer today without official complaint, remonstration or protest.
>
> The Saudi Arabian government has made it a practice to refuse both entry and transit privileges to any American citizen of Jewish faith or of Jewish descent. American citizens of such faith and descent on board planes which are forced, by emergency, to land in Saudi Arabian airports—and airports of some other Arab countries as well—are treated like pariahs or lepers and are denied even the basic courtesies of temporary emergency hospitality. These Americans are frequently locked up until their plane takes off again or are forbidden to leave the plane at all.
>
> The Saudi Arabian government has decreed and enforced a boycott against American firms and corporations in which Americans of Jewish faith have an interest. Questionnaires are circulated to all American firms doing business with Saudi Arabia asking the impertinent and sometimes impossible questions as to whether any Jews are associated with the firm.
>
> Finally—and most insupportable of all—the Saudi Arabian government, having granted to the United States the right to construct an air base in Saudi Arabia, presumes to tell us that we must not station on this base or allow to land on this base any American soldier or other individual who is of Jewish faith or descent.
>
> Americans of Jewish faith and descent, including GI's, are restrained by our government from boarding any plane, military or otherwise, which is scheduled to land, even in transit, at the airports of most Arab countries.
>
> Our government accepts the boycott against certain American firms on the incredible basis that so-called Jewish interests are involved in these firms.
>
> Finally our State Department studiously refrains from sending to the American base in Saudi Arabia any American soldier who is of Jewish faith or descent. . . .

. . . The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchism or despotism . . . While the Constitution remains unaltered it must be construed now as it was understood at the time of its adoption; . . . it is not only the same in words but the same in meaning; 'As long as it continues to exist in its present form, it speaks not only in the same words, but in the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States.' Any other rule of construction would abrogate the judicial character of this Court, and make it the mere reflex of the popular opinion or passion of the day. (See Dred Scott vs. Sanford 19 How, 393 at 426) . . .

If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned . . .

Justice George Sutherland

MISS MATILDA FENBERG

Member of our Board of Managers, Miss Matilda Fenberg, is the author of "Status of Children: Divorce and Separation Cases" in the June 1956 issue of the Chicago Bar Record.

BOOK REVIEWS

WE THE JUDGES.. Studies in American and Indian Constitutional Law from Marshall to Mukherjea. By Justice William O. Douglas. Doubleday and Company, Inc. 480 pp. $6.00.

Reviewed by ELMER GERTZ

Justice William O. Douglas is universally known as one of the miracles of American life, comparable to the Seven Wonders of the ancient world. The ancient wonders were physical in nature, although they may have had symbolical connotations superimposed upon them. This modern miracle is intellectual and spiritual in nature, with physical appendages, such as a lust for mountains and men, distances and strangeness. Justice Douglas would have been congenial company for Ulysses on his storm-tossed wanderings; but unlike the hero of the Homeric epic, he would have written cerebral books about what befell him. He finds in physical adventures mental stimulation, and not merely excercise for his biceps and jaws.

He delivered the Tagore Lectures at the University of Calcutta, India, in July, 1955, in addition to other wanderings among men and ideas. These dealt with constitutional questions, American and Indian, the decisions of the U. S. Supreme Court to June, 1955 and of the High Courts of Independent India to the spring of the same year. He acknowledges the aid of Harvey Grossman on the Indian materials. Of course, he has an intimate knowledge of the court in which he has served so long and well. There are long chapters on the general nature of the two systems, the judiciary and judicial power, the dual system of courts, legislative prerogatives, the administrative agency, the reach and limitations of the commerce clause, federal vs. state power in the commerce clause, the reach of due process, the rights of speech, press and religion, the right to a fair trial, equal protection. One gets a better view here of American law by contrasting it with Indian law, and a better view of Indian law by placing it in juxtaposition with American law. This makes good sense judicially as well as rhetorically. Passage after passage begs for extensive quotation even in a brief review; for Justice Douglas has one of the great germinal minds of our day. His specific field is the law, but his basic interest is mankind. To him the law is simply an instrument, both remedial and philosophical in nature, for probing what makes human beings and their institutions what they are, have been and will be. To some, as Justice Cardozo aptly saw, the purpose of the law is the preservation of the ancestral smell; to Douglas it is a means of cleaning up the Stygian stables of lust, avarice, tyranny, bigotry, malice, cruelty.

Justice Douglas sums up his philosophy in one small paragraph towards the end of his book without labelling it as such. "The realm of the conscience," he says, "should be placed beyond the reach of government. Political beliefs, like religious convictions, are one's own business. One would not be subject to an accounting for anything but his conduct." He adds: "Man's struggle for freedom in the western world has largely been an effort to be free from the inquisition." And: "Whenever government reaches into the lives of citizens to deprive them of rights or to restrict their liberty, the steps it takes should be strictly measured by due process of law." To him: "The judiciary is in a large sense the guardian of the conscience of the people as well as of the law of the land . . . Its decisions are more apt to reflect tradition and first principles than political expediency." And: "Judicial review gives time for the sober second thought." This great dissenter of our day loves the Supreme Court more than do the pious respectables who are as willing as Torquemada to destroy heretics. He quotes a Chinese friend as having said to him: "If only we had a Supreme Court like this, China would be saved."

Many of the differences between the American and Indian judicial system arise, as Justice Douglas points out, because India in a constitutional sense is more one nation than a federation of states than we are. There is only one Indian citizenship, and not dual citizenship as here; and the Supreme Court there has broader powers over state courts than here. This is not an unmixed good, as Justice Douglas shows, in agreement with Gandhi himself. But he confidently hopes that India will learn, just as we did, through long years of trial and error in the continuous experimentation of a free people.

ELMER GERTZ ACTIVE

Past President Elmer Gertz, was one of the moving spirits in connection with the recent celebration of the Bernard Shaw Centennial. He was Chairman of the Exhibits and Displays and brought together what Dr. Archibald Henderson, Shaw's official biographer, described as "the best collection of Shaviana ever seen in the world." Gertz also participated in two TV programs on Shaw over Channel #11 and in the Northwestern Reviewing Stand Program over a national hook-up, and on the WIND Forum of the Air.

JUDGE HYMAN FELDMAN PRAISED

Member Judge Hyman Feldman was the subject of a one page, illustrated article in the Sunday July 29, rotogravure section of The Chicago Tribune. The story, by the veteran journalist, John H. Thompson, was entitled "Chicago Fights Alcoholism."

With the ascension to the Bench of "freshman" Judge Hyman Feldman in the Monroe Street police court, stated the writer, the "skid row" area of Chicago inhabited by about twenty-six thousand persons:

> . . . had found a friend. For the first time in the sorry history of a sodden area the man who wore judicial robes looked at the hopeless with compassion, treated them as individuals and not an anonymous mass, recognized that the frightening problem of alcoholism was one of disease and not crime . . .

And, at the end of the first three months:-

> . . . the normal tour for this court, leaders of the "skid row" religious missions, Alcoholics Anonymous, the American Legion, and others begged Chief Justice Raymond Drymalski to extend Feldman's assignment . . .
> . . . Throughout 1955, Feldman was Chicago's "skid row" judge, sitting in the assignment no judge wanted four times longer than any predecessor . . .

BEN SCHWARTZ

Member Ben Schwartz, Assistant Attorney General of the State of Illinois, was chosen by the Cook County Republican Central Committee as a candidate for a vacancy on the Superior Court Bench.

Mr. Schwartz has been an Assistant Attorney General for the past eighteen years having served continuously under four different Attorney Generals. He is also a guest lecturer at Northwestern University School of Law where he conducts an annual course for Prosecuting Attorneys from all over the United States.

LECTURE ON COPYRIGHT PROTECTION

Mr. Herman Finkelstein of New York, General Counsel for the American Society of composers, authors and publishers, will speak at a luncheon on October 12, at the Covenant Club, on "Copyright Protection in the United States."

Mr. Finkelstein's address will be held under the auspices of The Decalogue Forum Committee, Louis L. Karton chairman.

Lawyer's LIBRARY

Learning is an ornament in prosperity, a refuge in adversity, and a provision in old age. —ARISTOTLE

Beveridge, John W., *Law of Federal estate taxation.* Chicago, Callaghan, 1056. 2v. $40.00.

Brand, G. E. *Bar associations, attorneys and judges; organizations, ethics, discipline.* Chicago (1155 E. 60th St.), American Judicature Soc., 1956. 1074 p. $7.50.

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"What do you know about this business?" the King said to Alice.

"Nothing;" said Alice.

"Nothing whatever?" persisted the King.

"Nothing whatever," said Alice.

"That's very important," the King said, turning to the jury.

LEWIS CARROLL, *Alice in Wonderland*

On the occasion of our High Holidays

The President, the officers, and the Board of Managers of The Decalogue Society of Lawyers extend to fellow members, their families, and to the entire legal profession their warmest wishes for a very Happy New Year.

SORROW

The Decalogue Society of Lawyers announces with deep regret the deaths of the following members:

Joseph M. Edidin Harry N. Pritzker

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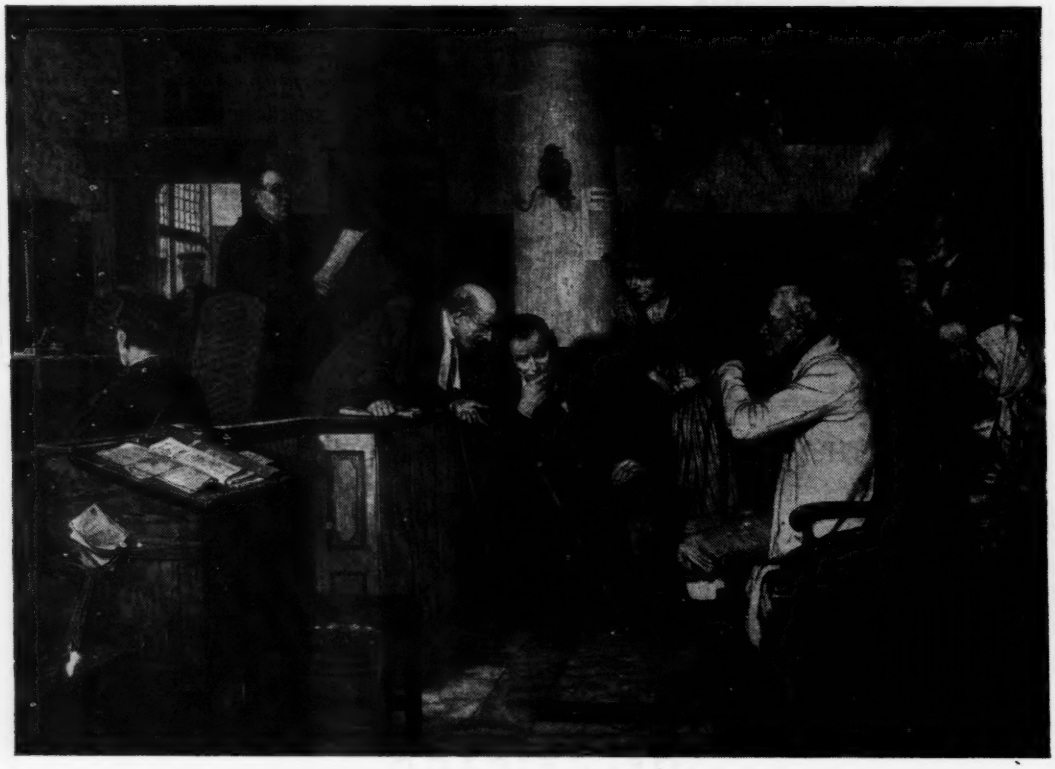

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